

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARIANO CASTRO,

Defendant.

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CR. 06-40022

REPORT AND RECOMMENDATION
ON DEFENDANT'S CHANGE
OF PLEA

This matter came before the court for a change of plea hearing on Thursday, June 10, 2010. The Defendant, Mariano Castro, appeared in person and by his counsel, TJ Von Wald, while the United States appeared by its Assistant United States Attorney, John Haak.

The defendant consented in open court to the change of plea before a United States magistrate judge. This court finds that the defendant's consent was voluntary and upon the advice of counsel. The government also consented to the plea hearing before a magistrate judge. Further, the parties waived their right to object to the report and recommendation.

Defendant has reached a plea agreement wherein he intends to plead guilty to the Indictment which charges him with Conspiracy to Distribute and Possess with Intent to Distribute a Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1) and 846. At the hearing, the defendant was advised of the nature of the charges to which the defendant would plead guilty and the maximum penalties applicable, specifically: mandatory minimum 5 years imprisonment; maximum 40 years imprisonment; a \$2 million fine; or both; 5 years supervised release (mandatory minimum 4 years

supervised release); 3 additional years imprisonment if supervised release is revoked; and a \$100 special assessment.

Upon questioning the defendant personally in open court, it is the finding of the court that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that his plea of guilty to the Indictment is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. The defendant's guilty plea to the Indictment is accepted. It is my report and recommendation that the defendant be adjudged guilty of that offense.

Further, upon imposition of sentence in this case the government intends to move to dismiss the failure to appear indictment in CR. 07-40071.

Dated this 11th day of June, 2010.

BY THE COURT:

s/John E. Simko

John E. Simko
United States Magistrate Judge